



March 16, 2021

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Re: *Kelly Tshibaka v. The Retired Public Employees of Alaska, Inc.*
Supreme Court Case No. S-17577

Dear Counsel:

Justices Winfree and Maassen recently learned that the supplemental retirement benefit at issue in this appeal relates not only to PERS retirees, but also to JRS retirees. Justice Winfree advises that he will be retiring from the court in February 2023, and Justice Maassen advises that he will be retiring from the court no later than January 2025. As the Justices presently understand the situation, upon retirement they would be faced with choosing whether to elect the supplemental retirement benefit at issue (assuming it is available). Both Justices also understand that the supplemental benefit election is an annual election and that senior justices otherwise available to substitute for recused justices thus have the same conflict of interest, as would any sitting or retired judge from the court of appeals, the superior court, and the district court.

It therefore presently appears to Justice Winfree and Justice Maassen that, notwithstanding this conflict of interest, the rule of necessity requires their participation in the appeal. *See Hudson v. Johnstone*, 660 P.2d 1180, 1183 (Alaska 1983).

Justice Winfree and Justice Maassen advise that they have no personal bias for or against either of the parties or their counsel in the matter, and that they have no reason to believe they cannot be fair and impartial when deciding this appeal. But they

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also understand that the parties may at this point have a better understanding of the issue before the court and that they may not appreciate some aspect of the matter that would impact their decisions to participate.

Justices Winfree and Maassen therefore request that, if a party has concerns about either of them participating in the appeal, the party file an appropriate objection stating the relevant facts of the case affecting either Justice Winfree's or Justice Maassen's participation, the law supporting recusal, and why the rule of necessity would not apply. Any objection must be filed by Monday, March 22 at 3:00 p.m., or will be considered waived. *See* Alaska Code of Judicial Conduct, Canon 3F.(3). A party's response to the other party's objection must be filed by Thursday, March 25 at 3:00 p.m.

Justice Winfree and Justice Maassen thank you in advance for your expedited consideration of this matter.

Sincerely,


Meredith Montgomery

cc: Supreme Court Justices